

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

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PLR-109031-14

Date:

August 27, 2014

Legend:

Company =

Sub =

Venture =

Operator =

LLP =

CFO =

X =

Y =

Date =

Dear :

This is in reply to a letter dated February 25, 2014, requesting on behalf of Company and Sub an extension of time, under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations, to file Form 8875 to elect to have Sub be

treated as a taxable REIT subsidiary ("TRS") of Company under section 856(l) of the Internal Revenue Code ("Code").

FACTS

Company has elected to be treated as a real estate investment trust ("REIT") under section 856(a) of the Code.

Company holds an X% interest in Venture, a limited liability company ("LLC"). The remaining Y% interest in Venture is held indirectly by Operator, another LLC. Operator manages the activities of Venture.

On Date, Venture formed Sub as a single member LLC. Venture intended to elect to treat Sub as a corporation for federal income tax purposes. Venture also intended for Company and Sub to elect to treat Sub as a TRS for federal income tax purposes.

Company relies heavily upon its joint venture agreement with Operator to ensure full compliance with regulatory matters. Operator confirmed in the agreement that Company's investment would comply with all REIT requirements, and Company understood that Operator would fulfill all of the necessary requirements. As a result, Company lacked specific knowledge of the status and completion of regulatory requirements associated with Venture, because regulatory compliance was the function of Operator.

When Sub was formed, Operator was ultimately responsible for assuring that Sub and Company jointly make the TRS election, but lacked experience with REITs and was unaware of the election requirement.

About two months after the filing date for the desired TRS election had passed, Operator hired CFO, an individual. CFO was at first unaware of the need to file the election. CFO contacted a member of LLP, a firm that provides accounting and financial services, for general advice regarding the joint venture, and discovered the requirement for a TRS election along with the fact that the deadline for making the election had passed. LLP was subsequently retained to pursue corrective action and promptly prepared a request to extend the time for filing the Form 8875.

The following representations are made in connection with the request for an extension of time:

1. The request for relief was filed before the failure to make the regulatory election was discovered by the Internal Revenue Service ("Service").

2. Granting the relief requested will not result in Company having a lower tax liability in the aggregate for all years to which the election applies than Company would have had if the election had been timely made (taking into account the time value of money).
3. Company does not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time Company requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequences, Company and Sub did not choose to not file the election.
5. Company is not using hindsight in requesting this relief. No specific facts have changed since the due date for making the election that makes this election advantageous to Company.

In addition, affidavits on behalf of Sub and Operator were provided as required by section 301.9100-3(e) of the Procedure and Administration Regulations.

LAW AND ANALYSIS

Section 856(l) of the Code provides that a REIT and a corporation (other than a REIT) may jointly elect to treat such corporation as a TRS. To be eligible for treatment as a TRS, section 856(l)(1) provides that the REIT must directly or indirectly own stock in the corporation, and the REIT and the corporation must jointly elect such treatment. The election is irrevocable once made, unless both the REIT and the subsidiary consent to its revocation. In addition, the election and the revocation may be made without the consent of the Secretary.

In Announcement 2001-17, 2001-1 C.B. 716, the Service announced the availability of Form 8875, Taxable REIT Subsidiary Election. According to the Announcement, this form is to be used for tax years beginning after 2000 for eligible entities to elect treatment as a TRS. The instructions to Form 8875 provide that the subsidiary and the REIT can make the election at any time during the tax year. The instructions further provide that the effective date of the election cannot be more than 2 months and 15 days prior to the date of filing the elections or more than 12 months after the date of filing the election. If no date is specified on the form, the election is effective on the date the form is filed with the Service. Officers of both the REIT and the TRS must jointly sign the form, which is filed with the IRS Service Center in Ogden, Utah.

Section 301.9100-1(c) of the Procedure and Administration Regulations provides that the Commissioner has discretion to grant a reasonable extension of time to make a

regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) through (c)(1)(i) sets forth rules that the Service generally will use to determine whether, under the facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of section 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of section 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith. Section 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

CONCLUSION

Based upon the facts and representations submitted, we conclude that Company and Sub have shown good cause for granting a reasonable extension of time to elect to have Sub be treated as a TRS under section 856(l) of the Code. The extension of time to make the election is 90 days from the date of this letter.

This ruling is limited to the timeliness of the filing of Company's Form 8875 for purposes of the election under section 856(l) of the Code. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed with regard to whether Company otherwise qualifies as a REIT under subchapter M of the Code or whether Sub otherwise qualifies as a TRS under section 856(l).

No opinion is expressed with regard to whether the tax liability of Company and Sub is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of the transaction described above.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the terms of a power of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Andrea Hoffenson
Andrea Hoffenson
Chief, Branch 2
Associate Chief Counsel
(Financial Institutions & Products)